IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1659 OF 1992

Mishrimal Jethmal Oswal)
Indian Inhabitant, residing at 88/2, Radha Niwas,)
Lonavla, Dist. Pune.)..Petitioner

Versus

1. Lokayukta, Maharashtra State.)
   New Administrative Bldg., Madam Cama Road,)
   Bombay-400 032.)

2. Y.S. Contractor, ex-President, Lonavla Municipal)
   Council, residing at Lonavla, Tal. Maval,)
   Dist. Pune.)

3. S.S. Naik, the then Chief Officer of Lonavla)
   Municipal Council, Now Chief Officer of)
   Alibaug Municipal Council, Alibaug.)

4. Lonavla Municipal Council, Lonavla.)...Respondents.

Mr. K.K.Singhvi, Senior Advocate, with Ms. Tanu Mehta-Tiwari and Mr. S.R. Singhvi for the petitioner.

Mr. N.P. Deshpande, Assistant Government Pleader, for respondent No.1.

Mrs. Anita A. Agarwal for respondent No.2.

Respondent Nos. 3 and 4 are absent, though served.

CORAM: **DALVEER BHANDARI, C.J.** &
S.A. BOBDE, J.

DATE: JANUARY 10, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.)

1. According to the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 (hereinafter referred to as "the Act"), Lokayukta has power to investigate any action against a public servant. The short question which arises for consideration is whether the jurisdiction of Lokayukta would lapse half-way through the hearing of complaint, just because the accused ceases to be public servant during the course of hearing. The Lokayukta by virtue of Section 7 of the Act is invested with powers to investigate any action against a public servant. Section 7 of the Act reads as under:-

> 7(1)Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by, or with the general or specific approval of,--
>
> (i) a Minister or a Secretary; or

(ii)any public servant referred to in sub-clause (iii) of clause (k) of section 2; or

(iii)any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta in this behalf,

in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

(2)Subject to the provisions of this Act, an Upa-Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being a Minister, Secretary or other public servant referred to in sub-section (1) in any case where a complaint involving a

grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upa-Lokayukta, the subject of a grievance or an allegation.

(3)Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Upa-Lokayukta under that sub-section whether or not a complaint has been made to the Lokayukta in respect of such action.

(4) Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by an Upa-Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be open to question on

the ground only that such investigation relates to a matter which is not assigned to him by such order."

1. The brief facts, which are necessary to dispose of this Writ Petition, are recapitulated a sunder:-

2. Since respondent Nos. 2 and 3 were the President and Chief Officer of of Lonavla Municipal Council, respectively, and were "public servants" within the meaning of Section 7 of the Act, therefore, the Lokayukta started investigating the complaint. While the matter was being investigated, respondent No. 2 ceased to be the President of the Municipal Council.

3. It was submitted by the respondents that since respondent No.2 has ceased to be the President of the Municipal Council, Lonavla, therefore, the prosecution cannot proceed, whereas it was submitted by the petitioner that once Lokayukta is seized of the matter, which is within his jurisdiction, such jurisdiction cannot lapse half-way through the hearing of the matter, because during the pendency of the investigation, the second and third respondents ceased to be public servants.

4. According to the petitioner, the respondents were guilty of not having properly publicised a tender notice with regard to construction of certain roads. The petitioner further alleged that this tender notice was purposely not sufficiently publicised as respondent Nos. 2 and 3 were interested in awarding the tender to M/s. Pravin Stone and Metal Works, Pune, in which respondent No.2 had an interest. In fact, the contract relating to that tender for Rs.52,00,000/- was later awarded to M/s. Pravin Stone and Metal Works.

5. According to the Statement of Objects and Reasons, the Act is enacted to make provision for the appointment and functions of certain authorities for the investigation of administrative action taken by or on behalf of the Government of Maharashtra or certain public authorities in the State of Maharashtra, in certain cases and for matters connected therewith. According to the legislative intention of the Act, when complaints are made against persons, who are public servants, then, their complaints can be investigated by the Lokayukta. Mr. Singhvi, learned Counsel for the petitioner, has drawn our

attention to Section 7 of the Act. The learned Counsel has also brought to our attention Section 9 of the Act, which reads as under:-

> "9 (1) Subject to the provisions of this Act, a complaint may be made under this Act, to the Lokayukta or an Upa-Lokayukta.-
>
> (a) in the case of a grievance, by the person aggrieved;
>
> (b) in the case of an allegation, by any person other than a public servant;
>
> Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf.
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> (2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.
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> (3) Notwithstanding anything contained in any other enactment, any letter written to the Lokayukta or an Upa-Lokayukta by a person in police custody or in a goal or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such goal, asylum or other place and the Lokayukta or Upa-Lokayukta, as the case may be, may, if satisfied that it is

necessary so to do, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

(4) Notwithstanding anything contained in section 10 or any other provision of this Act, every person who wilfully or maliciously makes any false complaint under this Act shall, on conviction be punished, with imprisonment for a term, which may extend to three years, and shall also be liable to fine. No Court shall take cognizance of such offence except with the previous sanction of the Lokayukta."

6. Mr. Singhvi also referred to the definition of "allegation" contained in Section 2(b) of the Act, which means a public servant has misconducted and abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person. He submitted that the Lokayukta has the jurisdiction to entertain a complaint against a person, who, at the time of commission of misconduct, was a public servant. He submitted that it is of no consequence whether, during the period of investigation, he remains a public servant or not. He further

submitted that if the interpretation as given by the Lokayukta is accepted, then, perhaps, in no matter the allegations can be investigated by the Lokayukta because it would be entirely at the mercy of the person against whom the matter is investigated to permit the Lokayukta to continue with the investigation or not. At any point of time he can resign from that position and get absolved of the responsibility of his misconduct.

7. Mrs. Anita Agarwal, the learned counsel appearing for respondent No.2, supported the impugned order / judgment passed by the Lokayukta. She submitted that the Lokayukta has jurisdiction to investigate the matter as long as respondent No.2 remains a public servant, and thereafter, he ceased to have jurisdiction to investigate into the action taken by a public servant.

8. We have carefully considered the rival contentions and submissions made by the learned counsel for the parties. On consideration of the totality of the facts and circumstances, particularly the legislative intent and provisions of the Act, in our considered opinion, once the Lokayukta is seized of the matter which is within his jurisdiction, then, such jurisdiction cannot lapse half-way through the hearing of the

matter because the person against whom the matter is investigated ceased to be a public servant.

9. In this view of the matter, the impugned order passed by the learned Lokayukta on 20th February, 1992, is set aside and the complaint is remitted to the Lokayukta for adjudication in accordance with law. Since the matter is pending for over twelve years in this Court, we request the learned Lokayukta to expedite the investigation of the complaint.

10. Rule is made absolute. There shall, however, be no order as to costs.

CHIEF JUSTICE

S.A. BOBDE, J.